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From: White, Quintin
Sent: Mon 4/25/2016 4:16:48 PM
Subject: EPA Review and Response Comments to WDNR' Questions Rasied Regarding Rule Package 5

Issue 11: RP

- 1) **Scope of Issue:** Are the comments on Issue 11 limited to 40 CFR 122.44(d)(1) or all of (d)? I believe the intent was to address 122.44(d)(1).
- 2) **Reasonable Potential as it relates to narrative criteria:** Does 40 CFR 122.44(d)(1)(i), (v) or (vi) take precedent for reasonable potential to include limits when narrative criteria are exceeded?
 122.44(d)(1)(i) requires limits be included when there is a finding of reasonable potential.
 122.44(d)(1)(vi) provides the requirements/procedures when there are no numeric criteria for a specific pollutant. 122.44(d)(1)(v) provides the requirements/procedures for when the specific cause of toxicity is not established (unidentified pollutant or synergistic effects are suspected). Therefore, 44(d)(1)(i) is the fundamental requirement. The way to establish WQBELs is addressed by 44(d)(v) or (vi) depending whether you know what is causing the toxicity.
- 3) **Fundamentally Different Factors Variances (FDFVs):** Are we required to add language to implement FDFVs? (Note: 40 CFR 122.44(d)(8) "triggers" 40 CFR 125 Subpart D on FDFVs) I don't know; somebody else might need to answer.
- 4) **Types of Pollutants:** What do "nonconventional pollutants" and "chemical pollutants" include? – I will ask our staff for an answer on this as well. The 2010 Permit Writer's Guide include the following:

Conventional pollutants are those defined in CWA section 304(a)(4) and § 401.16 (BODs, TSS, fecal coliform, pH, and oil and grease).

Toxic (priority) pollutants are those defined in CWA section 307(a)(1) (and listed in § 401.15 and Appendix A of Part 423) and include 126 metals and manmade organic compounds (see Exhibit C-1 in Appendix C of this document).

Nonconventional pollutants are those that do not fall under either of the above categories (conventional or toxic pollutants) and include parameters such as chlorine, ammonia, nitrogen, phosphorus, chemical oxygen demand (COD), and whole effluent toxicity (WET).

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(Antibacksliding). I see the following two reasons allowed by 122.44(l) as a basis to possibly backslide.

(B)(1) Information is available which was not available at the time of permit issuance (other than revised regulations, guidance, or test methods) and which would have justified the application of a less stringent effluent limitation at the time of permit issuance; or

(E) The permittee has installed the treatment facilities required to meet the effluent limitations in the previous permit and has properly operated and maintained the facilities but has nevertheless been unable to achieve the previous effluent limitations, in which case the limitations in the reviewed, reissued, or modified permit may reflect the level of pollutant control actually achieved (but shall not be less stringent than required by effluent guidelines in effect at the time of permit renewal, reissuance, or modification).